

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEBRASKA

AT OMAHA, NEBRASKA

GUILLERMO HERRERA, III,)	
)	
Plaintiff,)	
)	
VS.)	Case No.
)	8:15-cv-426-JMG-CRZ
UNION PACIFIC RAILROAD)	
COMPANY, a Delaware)	
corporation,)	
)	
Defendant.)	

DEPOSITION OF ROBERT HERRERA

JUNE 9, 2016

REPORTED BY:	IMHOF AND ASSOCIATES, INC.
	COURT REPORTERS AND VIDEOGRAPHERS
VICTORIA IMHOF WERTZ, RPR	
CSR NO. 7999	20650 Adam Cir. 9431 Haven Ave.
	Yorba Linda, CA Suite 100
	92886 Rancho Cucamonga, CA
	91730
Job No. 160609V2	

Page 2

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEBRASKA
3 AT OMAHA, NEBRASKA

4
5
6
7
8
9 GUILLERMO HERRERA, III,)
10)
11 Plaintiff,)
12)
13 VS.)Case No.
14)8:15-cv-426-JMG-CRZ
15 UNION PACIFIC RAILROAD)
16 COMPANY, a Delaware)
17 corporation,)
18)
19 Defendant.)

20 DEPOSITION OF ROBERT HERRERA,
21 taken on behalf of the Plaintiff, at 9431 Haven
22 Avenue in the City of Rancho Cucamonga,
23 California, commencing at 11:27 a.m. and
24 concluding at 12:18 p.m. on JUNE 9, 2016, before
25 VICTORIA IMHOF WERTZ, RPR, CSR No. 7999.

Page 3

1 APPEARANCES
2 For the Plaintiff: BRENT COON & ASSOCIATES, PC
3 BY: JAMES L. COX, JR., ESQ.
4 3801 East Florida Avenue
5 Suite 905
6 Denver, Colorado 80210
7 (303) 756-3243
8
9 For the Defendant, UNION PACIFIC RAILROAD COMPANY
10 Union Pacific LAW DEPARTMENT
11 Railroad: BY: TORRY N. GARLAND, ESQ.
12 1400 West 52nd Avenue
13 Denver, Colorado 80221
14 (303) 405-5402
15 - AND -
16 LAMSON DUGAN & MURRAY, LLP
17 BY: DAVID J. SCHMITT, ESQ.
18 10306 Regency Parkway Drive
19 Omaha, Nebraska 68114
20 (402) 397-7300
21
22 Also present: Jerry R. Pritchett;
23 Christobal Rivero,
24 video technician
25

Page 4

1 I N D E X
2 WITNESS EXAMINATION PAGE
3 ROBERT HERRERA
4 BY MR. COX 5
5
6
7 EXHIBITS
8 (None)
9
10
11 INFORMATION REQUESTED
12 (None)
13
14 UNANSWERED QUESTIONS
15 (None)
16
17
18
19
20
21
22
23
24
25

Page 5

11:27:09 1 RANCHO CUCAMONGA, CALIFORNIA
11:27:09 2 THURSDAY, JUNE 9, 2016
11:27:09 3 11:27 A.M.
11:27:10 4
11:27:10 5 ROBERT HERRERA,
11:27:10 6 called as a witness herein, having
11:27:10 7 first been duly sworn, was examined
11:27:10 8 and testified as follows:
11:27:10 9
11:27:28 10 THE VIDEOGRAPHER: We are on the record
11:27:29 11 with Robert Herrera.
11:27:32 12
11:27:32 13 EXAMINATION
11:27:32 14 BY MR. COX:
11:27:32 15 Q Mr. Herrera, good morning, sir.
11:27:34 16 A Good morning.
11:27:35 17 Q I'm Jim Cox. I'm Guillermo Herrera's
11:27:38 18 lawyer.
11:27:39 19 Thank you for coming down today to give us
11:27:41 20 your memory of what occurred on July 26th, 2015.
11:27:46 21 State your full name for me, please.
11:27:47 22 A Robert C. Herrera, Jr.
11:27:50 23 Q Where do you live?
11:27:51 24 A I live in Buckeye, Arizona.
11:27:54 25 Q Who do you work for now?

Page 6			Page 8		
11:27:56	1	A Union Pacific Railroad.	11:30:07	1	cleanup crew -- is that the crew just ahead of you
11:27:56	2	Q How long have you worked for the	11:30:10	2	in the sequence of events?
11:27:58	3	Union Pacific Railroad?	11:30:12	3	A That would be correct.
11:27:59	4	A 22 years.	11:30:17	4	Q And you cannot do your surfacing work
11:28:00	5	Q And during that 22 years, has it all been	11:30:22	5	until the cleanup crew has completed its work; is
11:28:03	6	in the Engineering Department?	11:30:28	6	that right?
11:28:05	7	A Yes.	11:30:28	7	A Not necessarily.
11:28:05	8	Q What jobs have you had in the Engineering	11:30:30	8	Q Fill me in.
11:28:07	9	Department for the UP?	11:30:31	9	A But normally that is a pattern that we try
11:28:09	10	A Foreman.	11:30:33	10	to, you know, do.
11:28:10	11	Q Have you been a foreman all of your	11:30:35	11	Q All right.
11:28:12	12	career?	11:30:37	12	And was the Surfacing Gang behind the
11:28:13	13	A Yes.	11:30:40	13	cleanup crew on July 25th and July 26th?
11:28:13	14	Q And --	11:30:45	14	A Yes, sir, it was.
11:28:14	15	A I was 18 years with Southern Pacific. I	11:30:45	15	Q All right.
11:28:18	16	don't know if you want to hear that.	11:30:47	16	Do you have a memory of how far that gang
11:28:19	17	Q No, that's true.	11:30:48	17	was spread out on the -- let's talk about the
11:28:23	18	The predecessor or another railroad that	11:30:51	18	morning of July 26th.
11:28:25	19	was bought by Union Pacific?	11:30:53	19	Would you have any reference point or any
11:28:26	20	A In '97, yes, sir.	11:30:55	20	way to know that?
11:28:28	21	Q All right.	11:30:56	21	A From where I'm at to where the prep gang
11:28:29	22	What was your job on the steel gang 8501	11:30:58	22	is that starts the job?
11:28:34	23	on July 24, 25, 26, 2015 -- July 26th, 2015 is the	11:31:00	23	Q Yes.
11:28:45	24	date Guillermo Herrera had his heat illness, just	11:31:05	24	A And -- I'm going to say six miles, if I
11:28:48	25	to give you a little reference.	11:31:09	25	recollect correctly.
Page 7			Page 9		
11:28:48	1	What was your job on that day?	11:31:10	1	Q Obviously, there was some gap in there
11:28:51	2	A Surfacing Gang foreman.	11:31:13	2	where you all were not working on the track, you
11:28:53	3	Q And what are your responsibilities as the	11:31:15	3	all had jumped some track?
11:28:55	4	Surfacing Gang foreman?	11:31:18	4	A We did -- we did have skips in there,
11:28:57	5	A I have got a tamper and I've got a	11:31:22	5	correct.
11:28:59	6	regulator back there. What we do is we come behind	11:31:22	6	Q All right.
11:29:03	7	8501. My gang number is 8503, and we surface	11:31:25	7	So you have two machines, a tamper and a
11:29:10	8	behind them. We make sure that the track is	11:31:28	8	regulator.
11:29:12	9	aligned properly, got the correct cross-table on	11:31:29	9	Just describe, generally -- we are trying
11:29:16	10	it, on tangent track. And on curves and stuff, we	11:31:30	10	to educate the jury a little about what railroad
11:29:21	11	make sure that we have got the superelevation as	11:31:36	11	track was like -- which I personally find kind of
11:29:25	12	required and our spirals and stuff, and just all	11:31:40	12	fascinating -- but what does a tamper do?
11:29:27	13	railroad, you know, taught to make the track	11:31:44	13	A What a tamper does -- it comes behind
11:29:31	14	refined there behind the projects ahead of us. So	11:31:46	14	there and it makes the track -- in railroad terms,
11:29:35	15	we basically surface.	11:31:50	15	the way that I know how to explain it is, if you
11:29:37	16	Q Okay.	11:31:52	16	are going down and everybody just thinks you go
11:29:37	17	When your gang finishes, we have got nice	11:31:55	17	down the track there -- and on tangent track, which
11:29:39	18	looking pads, rails, ballast, toe path, ballast	11:31:58	18	is straight track there, if you have got any
11:29:44	19	shoulder, nice looking track?	11:32:00	19	adverse cross level or superelevation in your
11:29:46	20	A Yes, that's correct.	11:32:03	20	spirals, the curves, what the tamper does, operator
11:29:47	21	Q All right.	11:32:07	21	does, ground man does, foreman does, and what I do,
11:29:48	22	How long have you been a Surfacing Gang	11:32:11	22	and I was out there doing that morning -- I was out
11:29:50	23	foreman on the 8503 assigned with 8501?	11:32:12	23	in front of the tamper checking the tamper, marking
11:29:54	24	A Going on six years.	11:32:15	24	the curve and stuff, checking the cross level to
11:30:03	25	Q Is the -- is the quality control or	11:32:17	25	make sure -- to see what cross level would have in

Page 10		Page 12	
11:32:17	1 there, if any damage was done, any abnormalities.	11:34:12	1 the tracks, over both rails there with his wings
11:32:17	2 And it was pretty decent track. The cross	11:34:15	2 there. And then with his plow, he comes out and
11:32:26	3 level was off maybe about a half inch. The spirals	11:34:18	3 pushes it where it needs to be.
11:32:29	4 were pretty accurate. Also with some	11:34:21	4 When all of that process is done, he will
11:32:30	5 superelevation -- it needed some superelevation.	11:34:24	5 come and broom it, get all of the excess ballast
11:32:33	6 We didn't have the rock to protect the work	11:34:27	6 out of the rails and stuff. And that's just part
11:32:37	7 required in superelevation. What we did is we come	11:34:29	7 of the formula to hold that track in place. It's
11:32:40	8 around there.	11:34:32	8 critical.
11:32:40	9 So what we did is we just come around	11:34:33	9 Q Okay.
11:32:40	10 there and we do all of our work with the tamper,	11:34:34	10 There's one operator on the regulator?
11:32:43	11 with the regulator depending what was in front of	11:34:36	11 A That would be correct.
11:32:46	12 us -- ahead of us -- because we have no access to	11:34:37	12 Q And is there one operator on the tamper?
11:32:48	13 rock there. If we go out and do something, it's	11:34:39	13 A There's two.
11:32:50	14 built to UP standards.	11:34:40	14 Q Two. All right.
11:32:53	15 Every day, every project, I have got to be	11:34:43	15 And are there any other employees on your
11:32:56	16 out there and looking at the track and seeing what	11:34:45	16 gang?
11:32:57	17 kind of condition it's in there. And then	11:34:45	17 A Yeah, I have got another tamper in the
11:33:00	18 afterwards when we go through there with our	11:34:48	18 front. Another regulator up in front, also. They
11:33:03	19 tamper, with our regulator to get the lining we	11:34:54	19 go before and they basically do the same thing.
11:33:04	20 want, the cross level we want and uniformity of a	11:34:56	20 What we do is with that front tamper, front
11:33:08	21 track there, I have to check it every night behind	11:34:59	21 regulator there, it makes them more efficient for
11:33:10	22 the gang. And that particular project, the track	11:35:02	22 the gang to move through there and they come out
11:33:14	23 was actually pretty decent. We just refined it a	11:35:04	23 there and take out any holes or anything that's not
11:33:18	24 little bit there.	11:35:07	24 a normal process there.
11:33:19	25 Q Good.	11:35:09	25 Q I got it.
Page 11		Page 13	
11:33:20	1 Now, when you are talking about rock, you	11:35:10	1 But in terms of the gang, a portion of
11:33:21	2 are talking about ballast?	11:35:12	2 your Surfacing Gang that's behind the cleanup crew,
11:33:22	3 A Yeah, that would be correct.	11:35:15	3 you have got two machines, one operator on the
11:33:24	4 Q The rock or ballast that supports the	11:35:18	4 ballast regulator, two operators on the tamper and
11:33:26	5 ties, supports the tracks?	11:35:22	5 you are back and forth between the two parts of
11:33:28	6 A Yes.	11:35:25	6 your gang, I gather?
11:33:28	7 Q And when you are talking about cross	11:35:27	7 A And also I have Omaha track back behind
11:33:30	8 level, you are talking about the top of one tie to	11:35:29	8 us, they are a contractor there. They pick up any
11:33:32	9 the top of the other tie, are they level? Or if	11:35:32	9 rail that's back there or any OTM, which is plates,
11:33:32	10 they are in a curve, is the elevation appropriate	11:35:36	10 spikes, and other material there. And I'm in
11:33:35	11 for the curve?	11:35:38	11 charge of them, also.
11:33:36	12 A And that would be the "rail," correct.	11:35:40	12 Q I see.
11:33:37	13 Q Did I say "tie"?	11:35:41	13 This is a contractor that the UP has hired
11:33:39	14 A Yes.	11:35:42	14 to do that?
11:33:39	15 Q Sorry. I meant "rail."	11:35:44	15 A That would be correct.
11:33:39	16 A That would be the rail, correct.	11:35:45	16 Q All right.
11:33:42	17 Q What is the ballast regulator?	11:35:45	17 So they are, like, the final cleanup crew?
11:33:46	18 A What it does is once we got through this,	11:35:46	18 They pick up old rail, old on-track material, OTM,
11:33:48	19 the tamper, we raise the track enough to get the	11:35:52	19 anything that's left behind, they are tidying that
11:33:51	20 cross level that we want or the spiral, the	11:35:54	20 up?
11:33:55	21 elevation, the superelevation in our curves. Once	11:35:55	21 A Yeah. They are normally behind -- between
11:34:00	22 we get it where we want it at, where it's	11:35:57	22 my tamper and regulator. That's normally where I
11:34:02	23 acceptable within our FRA requirements, the ballast	11:36:02	23 keep them at.
11:34:05	24 regulator has got wings on it. He comes behind the	11:36:03	24 Q Okay.
11:34:09	25 tamper and stuff. And he pulls the ballast up into	11:36:04	25 Is the cab of the regulator air

Page 14		Page 16	
11:36:06	1 conditioned?	11:38:21	1 A Actually, we do their -- I began passing
11:36:06	2 A Yes.	11:38:26	2 there. And if it exceeds the certain temperature,
11:36:07	3 Q Is the cab of the tamper air conditioned?	11:38:30	3 we have to protect our work there. In doing that,
11:36:10	4 A Yes.	11:38:32	4 we put out an FX at 2-F or F-1 there. And that
11:36:10	5 Q Do you remember on July 26th, 2015 where	11:38:39	5 protects the work of the steel gang plus my
11:36:13	6 the second part of your Surfacing Gang was in	11:38:42	6 surfacing gang. The surfacing gang is the one
11:36:16	7 relationship to the cleanup crew?	11:38:45	7 that's most critical there when it gets to a
11:36:20	8 A We were probably about three quarters of a	11:38:48	8 certain temperature or threshold, you know, then we
11:36:22	9 mile behind him.	11:38:50	9 have to protect our work behind us, what we are
11:36:24	10 Q And you know what I mean by the "cleanup	11:38:52	10 doing for that day and every day. And we do have
11:36:26	11 crew"? They call it "quality control" or "cleanup	11:38:54	11 to have some knowledge of the rail temperature and
11:36:29	12 crew"? It's the P-car and the camp car?	11:38:56	12 the temperature also for the various different
11:36:33	13 Those guys that are -- you know what I'm	11:38:59	13 locations that we are working.
11:36:35	14 talking about?	11:39:00	14 Q Okay.
11:36:36	15 A Yes, I do.	11:39:01	15 I'm learning something here finally.
11:36:36	16 Q Okay.	11:39:03	16 Thank goodness, I'm still learning.
11:36:43	17 Do you have a memory as to where the	11:39:06	17 I don't understand FX and all of that.
11:36:45	18 cleanup crew was on July 26th, 2015 in terms of the	11:39:08	18 Explain to me why that's a concern to you as a
11:36:51	19 rest of the gang that was ahead of it? Do you have	11:39:11	19 Surfacing Gang Foreman. What does all of that
11:36:54	20 any idea about that?	11:39:13	20 mean?
11:36:56	21 A I know we were in between switches there,	11:39:15	21 A All that means is we are doing a certain
11:36:59	22 Clark. I think we are closer to the east end there	11:39:17	22 work out there. And the temperature hits a
11:37:02	23 with the cleanup there.	11:39:22	23 threshold of what's on our timetable, our
11:37:04	24 Q How far were they away from the next	11:39:24	24 instructions there, that's how we protect the
11:37:06	25 machines ahead of them? How close or how far?	11:39:26	25 different work that we are doing out there on what
Page 15		Page 17	
11:37:12	1 A I honestly don't remember.	11:39:29	1 the heat index is doing. And all of that is
11:37:14	2 Q Okay.	11:39:31	2 documented on our timetables and stuff. And we are
11:37:15	3 A I don't remember.	11:39:36	3 given this information and we use that on a daily
11:37:16	4 Q You know, it's over a year ago. I know	11:39:38	4 basis.
11:37:19	5 it's not quite a year ago. If you don't remember,	11:39:40	5 We cannot go out there and do track work
11:37:21	6 tell me. That's fine.	11:39:42	6 and not protect the work or have some knowledge of
11:37:37	7 Do you have a memory of what the weather	11:39:46	7 remedial action there of the job that we are doing
11:37:38	8 was like that day anyway?	11:39:50	8 when it hits various temperatures.
11:37:41	9 The records show clear.	11:39:52	9 Q Are you talking about remedial action on
11:37:43	10 Do you have any other memory of what the	11:39:54	10 the rail or the track? Or something about the
11:37:46	11 weather was like on that day?	11:39:56	11 employees?
11:37:48	12 A No.	11:39:56	12 A The track.
11:37:48	13 Q I'm talking about sun or clouds.	11:39:57	13 Q Okay.
11:37:51	14 A It was a clear day. As far as I can	11:39:59	14 Now, explain to the jury a little bit -- I
11:37:53	15 recollect, it was a clear day. It was probably	11:40:01	15 think everybody finds this fascinating -- how much
11:37:55	16 about 100 degrees. It was warm. I was out walking	11:40:04	16 rail can move when it's hot and how much it can
11:38:01	17 track -- which I do, you know -- and it was	11:40:08	17 contract when it's cold.
11:38:04	18 probably -- it was clear. It was about 100	11:40:11	18 A Rail on the track or just rail laying?
11:38:06	19 degrees. Maybe a little over. I don't recollect	11:40:14	19 Q Let's talk about a -- let's take a 30 feet
11:38:09	20 exactly.	11:40:18	20 of rail, 141-pound piece of rail just laying on the
11:38:10	21 Q Okay.	11:40:24	21 ground, temperature of 90-something and what's that
11:38:10	22 As part of your job as the Surfacing Gang	11:40:27	22 rail going to do during the day as it warms up and
11:38:13	23 foreman -- do you need to know the temperature of	11:40:28	23 cools down?
11:38:16	24 the rail? Does that affect in any fashion your	11:40:28	24 A It could grow -- 39 foot, it could grow
11:38:19	25 work in surfacing the track?	11:40:35	25 maybe a 16th or 18th of an inch.

Page 18			Page 20		
11:40:38	1	Q By that, you mean expand?	11:43:09	1	fact that I guess the assistant foreman there was
11:40:40	2	A Yes, sir.	11:43:12	2	rotating the men, giving them a break to run their
11:40:40	3	Q Then you take that out over so many miles	11:43:17	3	equipment. And I told Guillermo, "He was probably
11:40:43	4	of track, how does heat or cold affect that length	11:43:20	4	doing that to give you guys a break because of the
11:40:47	5	of track when it's -- that length of rail when it's	11:43:23	5	heat and stuff."
11:40:51	6	laid on the track?	11:43:25	6	And just, kind of like to me, he took
11:40:53	7	A The form that they use, I'm not really,	11:43:28	7	exception to that stuff. I've been out there 40
11:40:58	8	really 100 percent sure how much it would move, you	11:43:30	8	years and stuff. And I just tried to explain it to
11:41:01	9	know, even on the various changes of the weather.	11:43:33	9	him. And I had seen that I wasn't getting nowhere.
11:41:03	10	But it will compress, and you know, track there on	11:43:35	10	And I just says, "You know, give him time, mijo.
11:41:08	11	this cool enough or if it's warm enough.	11:43:39	11	You guys work together. You are a work group
11:41:12	12	Q And is that part of what you are guarding	11:43:42	12	there. You guys are a team there." He goes,
11:41:14	13	against, that heat expansion and contraction?	11:43:45	13	"Okay, boss."
11:41:17	14	A Yes.	11:43:46	14	So after that, I went about my duties
11:41:17	15	Q All right. Okay.	11:43:48	15	there, you know?
11:41:32	16	And had you had any contact with	11:43:50	16	Q Did he mention to you that he was
11:41:34	17	Guillermo Herrera before he suffered the heat	11:43:51	17	concerned that the assistant foreman,
11:41:41	18	illness on July 26th?	11:43:53	18	Scott Nicholson, was not using the P-car to clip
11:41:43	19	A That day, that morning. Earlier there I	11:43:57	19	the rails, making you guys do it by hand?
11:41:47	20	was out walking track. Right in front of my	11:44:00	20	A No, at no point, no.
11:41:51	21	surfacing gang there and I was walking around	11:44:01	21	Q Did you observe that? Did you know
11:41:53	22	towards cleanup and stuff. And I was out just	11:44:02	22	whether the P-car was being used to declip the
11:41:56	23	checking the track, looking at the track there and	11:44:07	23	rails or not?
11:41:58	24	watching the quality behind the gang there and	11:44:08	24	A I honestly don't know.
11:42:01	25	marking curves and stuff. And I was walking up	11:44:10	25	Q It's supposed to be used?
Page 19			Page 21		
11:42:04	1	towards cleanup there. And I was maybe about an	11:44:11	1	A Yeah, that's part of its job, yeah.
11:42:07	2	eighth of a mile away from him, and I had seen	11:44:13	2	Q Do you have any memory in that
11:42:09	3	Mr. Herrera over there in the bushes off to the	11:44:15	3	conversation of Mr. Guillermo -- Mr. Herrera
11:42:12	4	side there. And I waved at him and I walked by.	11:44:18	4	talking with you about -- and I think I asked you
11:42:15	5	And he got my attention. He asked me to come over	11:44:22	5	about this -- Scott Nicholson not using the car?
11:42:19	6	and talk to him. I think that was about 10:00,	11:44:25	6	Did that come up in the conversation at all?
11:42:22	7	10:30, the best I can remember, I went over there	11:44:27	7	A No, sir, it did not.
11:42:25	8	and talked to him, asking him how he was doing. He	11:44:29	8	Q Now, you said he was in the shade.
11:42:29	9	was in the shade there. And he asked me what I was	11:44:32	9	Are there bushes there? Or trees? Or
11:42:32	10	doing. How was I doing? And stuff. He wanted a	11:44:34	10	what's the terrain like?
11:42:34	11	civil conversation and stuff.	11:44:35	11	A Yeah, there was some trees there.
11:42:37	12	I said, "What's the matter? Everything	11:44:37	12	Q Okay.
11:42:38	13	okay? You just cooling off?"	11:44:37	13	So he was in the shade of the tree? Did
11:42:41	14	And he says, "Oh, no, it's just this	11:44:40	14	it look like he was taking a break?
11:42:42	15	assistant foreman back here" -- he says -- "he kind	11:44:42	15	A Yeah, that's what it looked like.
11:42:48	16	of changed the pattern that we used to do our job	11:44:45	16	Q Okay.
11:42:51	17	back here. And he is not really familiar with the	11:44:45	17	Did you know Guillermo before?
11:42:54	18	process that we use back here."	11:44:47	18	A Just that he was part of the work group
11:42:56	19	And I said, "Well, he is the foreman back	11:44:49	19	there. I had seen him out there. You know, I
11:42:58	20	there. Give him time there. You guys work	11:44:52	20	didn't know him personally, you know?
11:42:59	21	together. You know, we are a work group. We have	11:44:55	21	Q Had you ever talked to him before?
11:42:59	22	got to help each other out. You have got to be	11:44:56	22	A "Hi." That kind of stuff.
11:42:59	23	patient with him."	11:44:59	23	Q That's it?
11:43:04	24	Then going further in the conversation	11:44:59	24	A Yeah.
11:43:06	25	with him, he -- to me, he took exception with the	11:45:00	25	Q Okay.

Page 22		Page 24	
11:45:00	1 How did Mr. Herrera seem at about 10:30	11:46:53	1 While they are bringing him over here, I
11:45:03	2 when you saw him?	11:46:55	2 see that they are assisting him. So I get my phone
11:45:04	3 A He seemed fine to me, personally, yeah.	11:46:58	3 there and I think I called Joe on the radio. I
11:45:07	4 Q All right.	11:47:01	4 didn't get no answer. I called for Charley on the
11:45:08	5 Anything else?	11:47:04	5 radio. I didn't get no answer. So I called
11:45:08	6 Any other contact or interaction with	11:47:06	6 Charley on the cell phone.
11:45:12	7 Mr. Herrera that day before the heat illness struck	11:47:08	7 I said, "Charley, I have got an employee
11:45:15	8 him?	11:47:10	8 over here that may need some attention here."
11:45:16	9 A No, no. That was it.	11:47:13	9 I says, "Where are you at?"
11:45:17	10 Q All right.	11:47:16	10 And he said where he was at. And I said,
11:45:20	11 How did you learn that Mr. Herrera had	11:47:18	11 "What are the chances you could meet me there at
11:45:22	12 suffered a heat illness?	11:47:22	12 Emmet? And we got Guillermo, he is -- they are
11:45:24	13 A I was called on the radio.	11:47:26	13 assisting him over to the van."
11:45:27	14 Q Tell me about that.	11:47:29	14 "I don't know what's going on here,
11:45:29	15 A I was -- back behind the tamper there and	11:47:31	15 Charley."
11:45:33	16 I was getting ready to go back up and talk to one	11:47:33	16 I said, "It's a good idea maybe you or Joe
11:45:36	17 of my operators there. It was one of the	11:47:36	17 meet me here and get him -- you know, see what we
11:45:38	18 contractors -- excuse me -- one of the contractors	11:47:39	18 can do to help him."
11:45:40	19 there.	11:47:42	19 Q Let me interrupt you there.
11:45:41	20 He was just about loaded there and I got	11:47:44	20 You get a call on the radio from
11:45:43	21 him off there having a job briefing and saying,	11:47:46	21 Scott Nichols -- is it "Nichols" or "Nicholson"?
11:45:45	22 "I'm probably not going to have time to get you	11:47:49	22 A I honestly don't know.
11:45:48	23 unloaded today," but I said, "in the morning, we	11:47:51	23 Q Anyway, it's the assistant foreman from
11:45:52	24 will get you unloaded."	11:47:52	24 the cleanup crew?
11:45:53	25 At that time, I got a call -- Bob Herrera.	11:47:54	25 A That would be correct.
Page 23		Page 25	
11:45:57	1 And I had my handset there. It was a little bit	11:47:55	1 Q He calls you on the radio and says what?
11:46:00	2 broken up there. And I said, "Hey, give me a	11:47:57	2 A He asked me that he needed some help and
11:46:04	3 minute there. Let me see what's going on."	11:47:59	3 that he has got Guillermo and tried to get ahold of
11:46:06	4 And it was Nichols. He called me and	11:48:05	4 the foreman there, Steve Gallop. He wasn't able
11:46:06	5 said, "Hey, Bob, I need some help up there." And	11:48:07	5 to. And when he told me that he was -- he
11:46:10	6 he says, "I got Guillermo up here. And he needs a	11:48:12	6 was -- trying to remember the exact words.
11:46:15	7 ride into the office there. He is not feeling	11:48:20	7 He just asked me if I could come to the
11:46:16	8 good."	11:48:23	8 cleanup car. He had an employee there that was a
11:46:16	9 I said, "Okay. I will be right there."	11:48:28	9 "little dehydrated" -- I believe was the words.
11:46:18	10 So I got ahold of Scott Viera, who is,	11:48:32	10 I said, "Sure. I will be right over." I
11:46:22	11 like, a foreman, but he is one of my operators. I	11:48:36	11 was over there in about five minutes.
11:46:22	12 said, "Scotty, I'm going to be of pocket. I'm	11:48:37	12 Q What time of day was this, about?
11:46:24	13 going to go up here to cleanup and see what's going	11:48:45	13 A 1:00, 1:30.
11:46:25	14 on."	11:48:49	14 Q And Scott Nicholson or the assistant
11:46:26	15 I said, "If Troy Passey calls, you are in	11:48:52	15 foreman, Scott, said, "He is a little dehydrated"?
11:46:28	16 charge of the game."	11:48:56	16 Is that what he said to you?
11:46:29	17 All of that took about a minute and a	11:48:59	17 A Yeah. I believe so.
11:46:32	18 half. I mean, by going up there, Scotty is just	11:49:02	18 Q And does Scott Nicholson, to your
11:46:32	19 right here on the side of me and up here making my	11:49:05	19 knowledge, have any medical training to determine a
11:46:33	20 way to my van. And I get up there to where	11:49:08	20 person's medical condition?
11:46:39	21 Scott Nicholson is. And he comes and he says,	11:49:10	21 A I'm not sure.
11:46:40	22 "Hey, I have got Guillermo here, I need you to take	11:49:10	22 Q All right.
11:46:44	23 him to charter Joe or take him -- he wants to go --	11:49:11	23 So you get in your van, drive over -- how
11:46:47	24 he wants to go to the motel. He wants to go home."	11:49:15	24 far are you from that cleanup crew physically?
11:46:51	25 And I said, "That's fine. That's fine."	11:49:19	25 A About three quarters of a mile, maybe a

Page 26			Page 28		
11:49:22	1	mile.	11:51:32	1	Q Guillermo wanted to go to the hotel?
11:49:22	2	Q And there's a right of way road there	11:51:34	2	A He wanted to go to the hotel, yeah.
11:49:24	3	along the track, is there?	11:51:37	3	Q From your training on UP about heat stress
11:49:26	4	A Yes, sir.	11:51:41	4	illness, are you aware that a person who is having
11:49:26	5	Q You drive up, what do you first observe?	11:51:44	5	heat stress illness is many times confused and
11:49:28	6	A I first observe a -- them bringing	11:51:46	6	doesn't have particularly good judgment? Is that
11:49:32	7	Guillermo over to my van. And they are assisting	11:51:49	7	part of your training?
11:49:37	8	him. He opened the door. They sat him in there.	11:51:51	8	MR. SCHMITT: Objection to the form.
11:49:41	9	And that's the first that I was made aware that we	11:51:52	9	Go ahead.
11:49:45	10	had a situation going on.	11:51:53	10	THE WITNESS: I didn't see where it even
11:49:46	11	I mean, I had just talked to him a couple	11:51:57	11	entered my mind that he was in that state. You
11:49:48	12	hours earlier and he was fine. You know, I'm not a	11:52:03	12	know, I just -- you know, I just talked to him a
11:49:51	13	doctor, and I don't have a degree -- but --	11:52:07	13	couple of hours earlier.
11:49:55	14	Q When you say they were helping him or	11:52:09	14	BY MR. COX:
11:49:58	15	carrying him, what does that look like? Who is	11:52:09	15	Q I'm not talking about a couple hours
11:50:01	16	"they"? And what are they doing?	11:52:10	16	earlier. I'm talking about at the time they load
11:50:03	17	A Two of the employees that work for	11:52:14	17	him into your van, did either of the guys that were
11:50:06	18	Scott Nicholson were assisting him. They weren't	11:52:18	18	helping carry Guillermo to your van say anything to
11:50:09	19	carrying him, assisting him over there. Just the	11:52:21	19	you about his condition?
11:50:12	20	humane thing to do.	11:52:23	20	A No.
11:50:14	21	Q Did he have their arms around him? Or he	11:52:24	21	Q All right.
11:50:16	22	had his arm around his shoulder?	11:52:25	22	Did Guillermo say anything to you?
11:50:18	23	A I don't remember. I think they just had	11:52:27	23	A He really didn't. He really didn't. The
11:50:21	24	him by the arm there.	11:52:30	24	conversation me and him had were with me and
11:50:22	25	Q Did you form an impression as to why they	11:52:33	25	Charley there was -- I initiated most of it.
Page 27			Page 29		
11:50:24	1	were doing that?	11:52:36	1	Q What did you say to him?
11:50:29	2	A Just to comfort him. I would say.	11:52:38	2	A I asked him, "Do you need any water?" I
11:50:31	3	Q I mean, was he having trouble walking?	11:52:42	3	said, "Are you comfortable?" And I put the seat
11:50:42	4	A No, no.	11:52:46	4	belt on for him.
11:50:42	5	Q What I'm trying to get to is why are they	11:52:48	5	I asked him, "Are you on any
11:50:45	6	helping him?	11:52:50	6	medication?" I said -- I asked him the last time
11:50:46	7	A I don't know. That's just the way it	11:52:55	7	he had ate. You know? And he responded. And I
11:50:48	8	played out. I can't -- I don't know.	11:53:00	8	said, "Do you need to go to the doctor?" And he
11:50:50	9	Q So you open the door to your van --	11:53:04	9	said, "No, I just need a break." He says, "I want
11:50:52	10	A No, I didn't open the door. I sat in the	11:53:08	10	to go to the motel."
11:50:55	11	driver's seat. They opened the door and assisted	11:53:10	11	Q Okay.
11:50:58	12	me in.	11:53:12	12	Now, then what happened?
11:50:59	13	Q Into the front seat of your van?	11:53:15	13	A Then after that there, I put my seat belt
11:51:01	14	A Yes, sir. That's correct. On the	11:53:18	14	on. I drive over to the Emmet store there, which
11:51:02	15	passenger side.	11:53:22	15	is about three and a half miles away. And I meet
11:51:03	16	Q What did those people say to you? The	11:53:24	16	up with the supervisor, Charley Diaz.
11:51:05	17	people that were helping Guillermo to the van?	11:53:27	17	Q Where is the Emmet store?
11:51:07	18	What did they say to you?	11:53:29	18	A From where we was working in Clark, it was
11:51:08	19	A I didn't spend a lot of time there. Once	11:53:32	19	about three and a half miles away out on the
11:51:12	20	I had seen Guillermo there, my concern was to get	11:53:35	20	interstate there away from where we was working
11:51:15	21	him to the job site, maybe to the doctor's office.	11:53:37	21	at.
11:51:20	22	Whatever.	11:53:38	22	Q Where was Charley Diaz when you talked to
11:51:22	23	And I told Nichols -- I says -- and Scott	11:53:40	23	him?
11:51:28	24	told me -- he says that he wanted to go to the	11:53:41	24	A "Charley Diaz"?
11:51:31	25	motel. You know?	11:53:43	25	Q I'm sorry. "Carlos Diaz."

Page 30			Page 32		
11:53:44	1	Where was Mr. Diaz when you talked to	11:57:11	1	Mr. Diaz?
11:53:46	2	him?	11:57:14	2	A About 1:45, maybe 1:30.
11:53:46	3	A I believe he was on the road coming out	11:57:18	3	Q Okay.
11:53:49	4	our way, coming out of Onaga.	11:57:18	4	Have you done anything to verify that?
11:53:53	5	Q And let me see if there's any chance of us	11:57:20	5	A No, no.
11:54:01	6	being able to orient where people were.	11:57:21	6	Q Okay.
11:54:05	7	I'm not going to mark this yet. Take a	11:57:21	7	By the way, have you kept any records or
11:54:08	8	look at that. That's a Google map and I'm not	11:57:23	8	notes or anything about what occurred that day?
11:54:11	9	really proud of it, but you see, this is Onaga	11:57:26	9	A No.
11:54:15	10	(indicating). And I think this shows -- I think	11:57:26	10	Q All right.
11:54:18	11	that's the railroad track. I'm not positive.	11:57:27	11	What did you say to Mr. Diaz when you
11:54:21	12	Does this help give you any help in	11:57:29	12	called him?
11:54:23	13	orienting where you were -- where you were working,	11:57:31	13	A When I called him on the cell phone?
11:54:25	14	where the job site was, where you met Mr. Diaz?	11:57:33	14	Q Yes, sir.
11:54:29	15	Does this help at all with any of that?	11:57:34	15	A I told him, "I have Guillermo in the
11:54:32	16	A No.	11:57:37	16	truck." And I said, "I talked to him."
11:54:33	17	Q Okay.	11:57:40	17	He said, "Bob, is he coherent?"
11:54:33	18	We will just do it by memory then.	11:57:43	18	I says, "Yeah."
11:54:36	19	So you called Mr. Diaz.	11:57:45	19	He says, "Are you on your way out?"
11:54:39	20	Did you know where he was?	11:57:46	20	I says, "Yeah."
11:54:41	21	A No.	11:57:48	21	He says, "I will meet you there at Emmet
11:54:41	22	Q What did you say to Mr. Diaz? You called	11:57:50	22	store."
11:54:44	23	him on the radio or on the phone?	11:57:52	23	He was there probably five minutes after I
11:54:46	24	A I called him on the cell phone.	11:57:53	24	got Guillermo up there -- even put him in the shade
11:54:49	25	Q Let's see.	11:57:57	25	even though my van has a great air conditioner and
Page 31			Page 33		
11:54:52	1	What is your cell phone number?	11:58:00	1	stuff -- wanted to get him comfortable and stuff.
11:54:53	2	A (623) --	11:58:03	2	And says, "Hey, Charley is on his way
11:54:54	3	Q Hang on. I have got to write it down.	11:58:06	3	here. He will meet us here."
11:55:02	4	"(623)"?	11:58:09	4	And I asked him, "Are you doing okay?"
11:55:03	5	A 229-2377.	11:58:11	5	And he said, "Yeah."
11:55:09	6	Q All right.	11:58:13	6	I said, "Do you want to go to the
11:55:09	7	Now, let see if I can -- give me a minute	11:58:15	7	hospital?" -- I asked him twice.
11:55:14	8	here.	11:58:17	8	And he says, "I just want to go to the
11:55:15	9	UP provided me phone records and I'm just	11:58:20	9	motel."
11:55:18	10	seeing if I can -- did you get him? Or did he have	11:58:21	10	Q Why would he want to go to the motel?
11:55:47	11	to call you back?	11:58:23	11	A I don't know. I mean, I don't know.
11:55:48	12	A No, I believe he picked up. Charley, back	11:58:25	12	Q Is it -- I mean, did you have any sense
11:56:09	13	then -- I don't know that he does now -- he had two	11:58:27	13	about his health? Or his physical condition? Or
11:56:13	14	cell phones.	11:58:30	14	his emotional condition? What -- did any question
11:56:19	15	Q Oh, okay. Because I'm not seeing a call	11:58:34	15	come into your head, "Why does he want to go to the
11:56:22	16	from (623) area code on here anywhere.	11:58:38	16	motel"?
11:56:52	17	Is your -- how close -- what town are you	11:58:39	17	A He is not the first employee to say that,
11:56:54	18	from, again?	11:58:42	18	you know?
11:56:55	19	A Buckeye, Arizona.	11:58:45	19	I mean, after 40 years, I have had a lot
11:56:57	20	Q How far is that from Phoenix?	11:58:47	20	of different jobs -- you know, we are men. You
11:57:00	21	A About 30 miles, west, near Interstate 10.	11:58:52	21	know? I don't know. He wanted to go to the motel.
11:57:04	22	Q Okay.	11:58:56	22	So I'm just not really sure.
11:57:06	23	Well, maybe we can verify that with	11:58:59	23	Q Okay.
11:57:08	24	Mr. Diaz.	11:59:00	24	A I can only tell you what he told me.
11:57:09	25	So about what time is it that you called	11:59:02	25	Q Okay.

Page 34			Page 36		
11:59:04	1	What happened next?	12:00:57	1	sorry, I don't speak Spanish well enough, but the
11:59:06	2	As I understand it, you have taken him out	12:01:01	2	translation is "help me"?
11:59:08	3	of the van and put him in the shade. Or did you	12:01:03	3	A "Help me."
11:59:11	4	park the van in the shade?	12:01:04	4	Q Do you have any sense as to why he would
11:59:13	5	A I parked the van in the shade.	12:01:06	5	do that?
11:59:16	6	Q He is still in the van?	12:01:07	6	A No, no.
11:59:17	7	A Yes, sir.	12:01:08	7	Q Okay.
11:59:17	8	Q All right.	12:01:13	8	And after you get him in Mr. Diaz's truck,
11:59:18	9	What happened next?	12:01:15	9	you return to the gang?
11:59:19	10	A When Charley showed up there, me and	12:01:16	10	A That is correct.
11:59:21	11	Charley would assist him out of the -- my van, put	12:01:17	11	Q Did you have any other interaction with
11:59:25	12	him in his truck. And then after that, they made	12:01:19	12	Mr. Herrera that day?
11:59:28	13	their way towards the office there. We have a	12:01:21	13	A No, I did not.
11:59:30	14	cooling station up there. And they headed up that	12:01:22	14	Q Since -- at any time since, have you
11:59:34	15	way. And by the time I got him help to Charley	12:01:25	15	spoken to him?
11:59:39	16	there, it was probably about 30 minutes.	12:01:26	16	A I haven't seen him or spoken to him.
11:59:42	17	Q All right.	12:01:29	17	Q Okay.
11:59:43	18	And then what did you do, return to your	12:01:55	18	All right.
11:59:45	19	gang?	12:02:11	19	Is the -- where is Emmet? Where did you
11:59:45	20	A I went back to my duties, yes.	12:02:13	20	all -- where did you stop? Where did you and
11:59:47	21	Q All right.	12:02:16	21	Mr. Diaz make the exchange with Mr. Herrera?
11:59:48	22	What -- did you ever hear Mr. Herrera say	12:02:20	22	A Emmet store.
11:59:50	23	anything to Mr. Diaz?	12:02:21	23	Q Where is that?
11:59:54	24	A No.	12:02:22	24	A From where we was working at the job site
11:59:54	25	Q All right.	12:02:26	25	there, Clark, it was probably about three and a
Page 35			Page 37		
11:59:55	1	A Nope.	12:02:28	1	half miles. From Onaga, where we had our job
11:59:55	2	Q Did you have to help Mr. Herrera from your	12:02:32	2	briefing that morning, I'm saying it was 12 miles.
12:00:00	3	van to Mr. Diaz's truck?	12:02:35	3	Q Give me some directions in compass.
12:00:02	4	A We assisted him to the truck.	12:02:38	4	Where was the job briefing in Onaga that
12:00:06	5	Q And did you put him in the front seat of	12:02:40	5	morning? Was it in Onaga?
12:00:10	6	Mr. Diaz's truck?	12:02:42	6	A In Onaga, it's a small little town there
12:00:11	7	A Yes, sir. We did.	12:02:46	7	parallel to railroad tracks.
12:00:12	8	Q And did you have to help him with the seat	12:02:47	8	Q Does the UP have a depot or facility
12:00:14	9	belt?	12:02:50	9	there? Where did you all have the job briefing
12:00:15	10	A Yes, sir, I did.	12:02:52	10	that morning?
12:00:16	11	Q All right.	12:02:53	11	A Right there in Onaga. We have our own
12:00:17	12	Anything else that you can recall	12:02:57	12	trailers. He have with a CPI trailer there. We
12:00:19	13	happening?	12:03:01	13	have a foreman, timekeeper's trailer and then we
12:00:28	14	A He did ask me in Spanish to help him,	12:03:05	14	have our safety supply trailer, also.
12:00:31	15	which I did.	12:03:07	15	Q Are those trailers that move with the
12:00:32	16	Q What does that mean?	12:03:09	16	gang?
12:00:34	17	A When we are putting him in Charley's seat	12:03:09	17	A Yes.
12:00:37	18	there, he whispered in my ear, "Ayudame" -- that	12:03:10	18	Q When you all started working in Onaga,
12:00:42	19	means, "Help me." You know?	12:03:13	19	these trailers were positioned in Onaga somewhere?
12:00:44	20	And I helped him into the seat in	12:03:16	20	A Yes.
12:00:46	21	Charley's truck, you know.	12:03:16	21	Q That's where you will have the job
12:00:50	22	Q I'm not sure I understand.	12:03:18	22	briefing and --
12:00:52	23	Is there a cultural significance to that?	12:03:19	23	A Yes, sir.
12:00:54	24	A No.	12:03:19	24	Q Do you remember where that was in Onaga?
12:00:54	25	Q So he whispers in your ear and the -- I'm	12:03:21	25	Would you have any memory? "Corner of this and

Page 38			Page 40		
12:03:24	1	that"?	12:05:18	1	Mike Rolow in the past several weeks about this
12:03:24	2	A No.	12:05:21	2	case or Mr. Herrera's claim against the railroad?
12:03:25	3	Q All right.	12:05:26	3	A The only conversation I had with Mike in
12:03:26	4	And how far was it from Onaga to the job	12:05:29	4	regards to this setting here is that I would have
12:03:28	5	site?	12:05:32	5	to make myself available on the 8th, 9th and 10th.
12:03:31	6	You keep talking about Clark. Is Clark a	12:05:36	6	That's pretty much the only conversation he and I
12:03:34	7	siding or a city?	12:05:39	7	had about this situation.
12:03:37	8	A Siding.	12:05:40	8	Q He didn't talk with you at all about any
12:03:37	9	Q How far is it from Onaga?	12:05:43	9	of Mr. Herrera's claims or anything that he was
12:03:41	10	A 15 miles, I believe.	12:05:46	10	claiming or his illness or anything like that?
12:03:43	11	Q And then what I'm trying to get to is how	12:05:49	11	A No, no, no.
12:03:47	12	did you get from where you picked Guillermo Herrera	12:05:50	12	Q Okay. All right.
12:03:50	13	up at the job site to Emmet to the little store --	12:06:00	13	If Mr. -- summarize for me how Mr. Herrera
12:03:56	14	A I didn't pick hip up at the job site.	12:06:03	14	appeared to you.
12:04:00	15	Q I mean --	12:06:05	15	A When I first seen him in the morning at 10
12:04:01	16	A Job briefing, yeah.	12:06:08	16	o'clock? Or later in the --
12:04:03	17	Q No, Mr. Herrera -- I thought you picked	12:06:10	17	Q Later.
12:04:05	18	him up -- I thought Mr. Nicholson and two fellows	12:06:11	18	When Mr. Nicholson and those two fellows
12:04:07	19	loaded him into your truck --	12:06:13	19	bring him over to load him up into your van, how
12:04:11	20	A At Clark.	12:06:17	20	did he appear to you?
12:04:12	21	Q -- or "van" -- at Clark?	12:06:18	21	MR. SCHMITT: Objection, asked and
12:04:14	22	A Yeah.	12:06:19	22	answered and form on "loaded." And in terms of
12:04:15	23	Q And then you drove to -- I think you	12:06:22	23	assisting.
12:04:17	24	described it as Emmet and met Mr. Diaz?	12:06:23	24	Go ahead.
12:04:20	25	A Yes.	12:06:27	25	THE WITNESS: I don't -- I'm not a doctor.
Page 39			Page 41		
12:04:20	1	Q Where is Emmet in relationship to Onaga,	12:06:29	1	I know he looked fine.
12:04:22	2	for example? Is it on the way to Onaga?	12:06:32	2	BY MR. COX:
12:04:25	3	A Yeah, in a sense. Yeah.	12:06:32	3	Q Was his speech normal?
12:04:27	4	Q And give me the route you drove. Your	12:06:33	4	A Yeah.
12:04:31	5	memory --	12:06:34	5	Q Did he talk to you?
12:04:31	6	A I don't remember. We worked so many	12:06:35	6	A Yes.
12:04:32	7	places. It's been a year. I honestly don't know	12:06:35	7	Q You said earlier you had to initiate all
12:04:35	8	the roads. I can just tell you in miles, you know,	12:06:37	8	of the conversations.
12:04:38	9	the best way I can remember.	12:06:39	9	When he spoke to you, did he appear to you
12:04:41	10	Q Well, were you headed to his motel? Were	12:06:41	10	to be fine?
12:04:43	11	you headed in the direction of his motel?	12:06:41	11	A Yeah, yeah. Both --
12:04:45	12	A No.	12:06:43	12	Q Why then -- did you have any sense in your
12:04:45	13	Q Were you headed in the direction of Onaga?	12:06:45	13	question, "Why are they putting him in my van,
12:04:49	14	A Yes. When I met Charley at Emmet, that	12:06:49	14	calling for an air-conditioned van and putting him
12:04:53	15	was on the way.	12:06:51	15	in my van?" Why are they doing that?
12:04:54	16	Q All right.	12:06:54	16	A We have cooler sayings out there. We
12:04:59	17	When you loaded Mr. Herrera into	12:06:56	17	leave our vehicles running and that happens
12:05:01	18	Mr. Diaz's truck, that's the last time you saw	12:06:58	18	periodically during the way when it gets warm. He
12:05:03	19	him?	12:07:01	19	is not the first person that I have had to go and
12:05:04	20	A Correct.	12:07:04	20	check on. That's just the format that we use out
12:05:05	21	Q Have you participated at all in any	12:07:08	21	there. We are concerned about our employees out
12:05:08	22	investigation about what happened to Mr. Herrera	12:07:10	22	there. It's a tough job.
12:05:10	23	that day?	12:07:12	23	Q But you weren't on your way to a cooling
12:05:16	24	A No.	12:07:14	24	station?
12:05:16	25	Q Have you had any conversations with	12:07:15	25	A No.

Page 42			Page 44		
12:07:15	1	Q When you went to Emmet, you weren't on	12:09:27	1	I says, "I'm right here at Clark."
12:07:18	2	your way to a cooling station?	12:09:30	2	He says, "I'm en route. I will meet you
12:07:20	3	A No.	12:09:32	3	there at Emmet at the store."
12:07:20	4	Q When did you go to Emmet instead of a	12:09:34	4	Q Okay.
12:07:23	5	cooling station?	12:09:35	5	Is Emmet -- okay. Did you -- did Mr. Diaz
12:07:24	6	A My van is the equivalent of the cooling	12:09:41	6	say anything to you about where he was taking
12:07:30	7	station. It's got AC.	12:09:44	7	Mr. Herrera?
12:07:32	8	Q I understand that, where were you heading?	12:09:45	8	A No.
12:07:35	9	Where were you going with Mr. Herrera?	12:09:52	9	Q So the only air-conditioned cooling
12:07:37	10	A To meet Charley Diaz at Emmet.	12:09:55	10	station that's available to gang 8501 is in Onaga;
12:07:42	11	Q Do you know where he was going from there?	12:10:04	11	is that right?
12:07:43	12	A He was taking him to the office with a	12:10:04	12	A Sometimes we use our mechanic's truck, we
12:07:47	13	cooling station.	12:10:07	13	use welding trucks, we use my van, you know,
12:07:49	14	Q There's a cooling station in Onaga?	12:10:11	14	depending on the temperature. If a guy wants to
12:07:52	15	A Yeah, or CPI there.	12:10:14	15	get into one of the vehicles that has AC, we oblige
12:07:55	16	Q That's different -- do you have a memory	12:10:17	16	him.
12:07:57	17	on that job site of having any tents with any	12:10:18	17	You know?
12:08:01	18	coolers and a battery operated fan?	12:10:19	18	Q I understand.
12:08:05	19	A Yes.	12:10:20	19	A That happens periodically.
12:08:05	20	Q You didn't take him to that, the tented	12:10:22	20	Q My question was, was that the only cooling
12:08:07	21	area?	12:10:24	21	station?
12:08:08	22	A It's not air conditioned. He wanted to go	12:10:24	22	A I don't know.
12:08:10	23	to the van. He wanted to go in. He wanted to go	12:10:25	23	MR. SCHMITT: Objection to the form.
12:08:13	24	to the motel. I acted appropriately. I'm not	12:10:26	24	Asked and answered.
12:08:15	25	going to argue with an individual, you know?	12:10:27	25	///
Page 43			Page 45		
12:08:18	1	Q I understand.	12:10:27	1	BY MR. COX:
12:08:19	2	So were you on your way to the CPI cooling	12:10:27	2	Q Is it the only air-conditioned facility
12:08:22	3	trailer in Onaga?	12:10:31	3	available to the gang?
12:08:24	4	A If I would not have been able to get ahold	12:10:32	4	Not a truck, not a trailer, not a machine,
12:08:27	5	of Charley, that's what I would have did. I would	12:10:35	5	but is it the only air-conditioned facility
12:08:30	6	have made it a point to get ahold of Mike Rolow or	12:10:39	6	available to the gang is the one in Onaga?
12:08:33	7	one of the supervisors and say, "This is the	12:10:44	7	MR. SCHMITT: Object to the form. Do you
12:08:37	8	situation I have got."	12:10:48	8	mean separate structure?
12:08:39	9	I would have taken him to the hospital if	12:10:50	9	MR. COX: He knows what I mean.
12:08:40	10	he asked me, you know?	12:10:59	10	BY MR. COX:
12:08:42	11	Q Okay.	12:10:59	11	Q Do you understand my question?
12:08:45	12	Now, when did you talk to Charley -- to	12:11:03	12	A No.
12:08:49	13	Mr. Diaz about meeting him with Mr. Herrera? Was	12:11:03	13	Q What is the CPI or cooling station that's
12:08:53	14	that before you left the job site with him in your	12:11:07	14	in Onaga? What does that look like?
12:08:57	15	van or en route?	12:11:09	15	A It's a boxcar there. It's probably
12:08:58	16	A No, after I saw them assisting him,	12:11:15	16	8-by-20.
12:09:02	17	bringing him to my van, I called Charley and said,	12:11:18	17	Q And it's got an air conditioning unit?
12:09:05	18	"You have got to meet me. Where are you at?"	12:11:22	18	A That's where the foremans, assistant
12:09:08	19	Q Why did you -- or go ahead.	12:11:23	19	foremans, we have our job briefings there.
12:09:11	20	A And I says, "They are bringing Guillermo	12:11:26	20	Supervisors go in there and do their work in there.
12:09:15	21	into my van here and I can't get ahold of Joe. Can	12:11:29	21	When it hits a certain temperature, we use that as
12:09:20	22	you meet me here?	12:11:32	22	a cooling station.
12:09:22	23	Do you want to bring him in?"	12:11:33	23	Q All right.
12:09:24	24	Charley says, "I will meet you. Where are you	12:11:34	24	Is that the only cooling station of that
12:09:26	25	at?"	12:11:36	25	design available to your gang?

Page 46			Page 48		
12:11:42	1	A Yes.	12:15:18	1	THE VIDEOGRAPHER: Off?
12:11:43	2	Q And were you headed to that cooling	12:15:19	2	MR. COX: Oh, yeah.
12:11:45	3	station?	12:15:21	3	THE VIDEOGRAPHER: Thank you. This is the
12:11:48	4	A No.	12:15:22	4	end of media number 1 and marks the conclusion of
12:11:48	5	Q You were just headed to Emmet to meet	12:15:25	5	today's deposition of Robert Herrera.
12:11:50	6	Mr. Diaz?	12:15:29	6	We are off the record.
12:11:50	7	A Yes.	12:15:36	7	MR. SCHMITT: Mr. Herrera, under the rules
12:11:51	8	Q And what happened from there, you don't	12:15:37	8	of deposition, you can read and sign the deposition
12:11:53	9	know?	12:15:40	9	or you can waive it. You just need to let the
12:11:53	10	A I don't know.	12:15:44	10	court reporter know if you would like to read and
12:11:57	11	Q And you don't see any opinion based on	12:15:46	11	sign the transcript or if you want to waive it.
12:12:02	12	your observation of Mr. Herrera as to why Assistant	12:15:48	12	It's up to you.
12:12:08	13	Foreman Nicholson and the two other people were	12:15:50	13	THE WITNESS: I would like to have that,
12:12:12	14	assisting Mr. Herrera to your van? You don't have	12:15:52	14	yeah.
12:12:15	15	any opinion about why they were doing that?	12:17:17	15	THE REPORTER: Mr. Schmitt, did you want a
12:12:17	16	A No.	12:17:17	16	copy of these depositions?
12:12:17	17	Q Did you call anyone else?	12:17:17	17	MR. SCHMITT: I will take an E-tran, also
12:12:25	18	You told us you tried to notify Mr. Rolow	12:17:38	18	condensed, four-to-a-page, with Word Index, and I
12:12:28	19	and Joe Linford.	12:17:45	19	also would like copies of all of the videos, too.
12:12:30	20	Did you call anyone else?	12:17:51	20	THE REPORTER: Mr. Garland, did you need
12:12:56	21	A No.	12:17:54	21	any copies?
12:12:56	22	MR. COX: Okay.	12:17:56	22	MR. GARLAND: No, no.
12:12:57	23	Let's go off the record. Let me just see	12:18:00	23	(Deposition concluded at 12:18 p.m.)
12:12:59	24	if I can find on this record the call. Let's just		24	
12:13:02	25	go off the record for just a second here.		25	
Page 47			Page 49		
12:13:05	1	THE VIDEOGRAPHER: We are going off the		1	
12:13:05	2	record.		2	
12:14:16	3	(Pause in the proceedings.)		3	
12:14:16	4	THE VIDEOGRAPHER: We are back on the		4	
12:14:18	5	record.		5	
12:14:18	6	BY MR. COX:		6	
12:14:18	7	Q I want to go back for a minute to when you		7	
12:14:20	8	walked up from your gang to the cleanup crew about		8	I, ROBERT HERRERA, declare under
12:14:24	9	10:30 in the morning.		9	penalty of perjury under the laws of the
12:14:26	10	You said at that time Guillermo Herrera		10	State of California that the foregoing is
12:14:29	11	appeared fine to you?		11	true and accurate.
12:14:30	12	A Yes, sir.		12	Executed at _____,
12:14:30	13	Q All right.		13	California, this _____ day of _____,
12:14:31	14	No droopy face? No speech problems? No		14	2016.
12:14:35	15	nothing like that?		15	
12:14:36	16	A Correct. Nothing. Nothing.		16	
12:14:39	17	Q Okay.		17	
12:15:03	18	That's all of the questions I have,		18	
12:15:05	19	Mr. Herrera. Thank you for coming down here today.		19	
12:15:09	20	A Yes, sir.		20	
12:15:09	21	MR. SCHMITT: I will wait with my		21	ROBERT HERRERA
12:15:10	22	questions until the time of trial. So we are		22	
12:15:12	23	done.		23	
12:15:14	24	MR. COX: Do you want to explain to your		24	
12:15:16	25	employee their rights under the deposition?		25	

1 REPORTER'S CERTIFICATE

2
3 I, VICTORIA IMHOF WERTZ, RPR, CSR NO.
4 7999, Certified Shorthand Reporter, certify:

5 That the foregoing proceedings were
6 taken before me at the time and place therein set
7 forth, at which time the witness was put under oath
8 by me;

9 That the testimony of the witness and
10 all objections made at the time of the examination
11 were recorded stenographically by me and were
12 thereafter transcribed;

13 That the foregoing is a true and
14 correct transcript of my shorthand notes so taken.

15 I further certify that I am not a
16 relative or employee of any attorney or of any of
17 the parties, nor financially interested in the
18 action.

19 Dated this 21st day of June, 2016.

20
21
22
23
24 VICTORIA IMHOF WERTZ, RPR, CSR No. 7999
25

1 REPORTER CERTIFICATION OF CERTIFIED COPY

2
3
4
5 I, VICTORIA IMHOF WERTZ, RPR, CSR
6 No. 7999, a Certified Shorthand Reporter in
7 the State of California, certify that the
8 foregoing pages 1 through 50 constitute a
9 true and correct copy of the original
10 deposition of ROBERT HERRERA, taken on
11 June 19th, 2016.

12 I declare under penalty of perjury
13 under the laws of the State of California
14 that the foregoing is true and correct.

15 Dated this 21st day of June,
16 2016.

17
18
19
20
21
22 VICTORIA IMHOF WERTZ, RPR, CSR No. 7999
23
24
25